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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/2007

SPONSOR Snyder LAST UPDATED _____ HB _____

SHORT TITLE Design & Build Minimum Construction Cost SB 725

ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	Indeterminate		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 725 amends the Procurement Code to authorize a design and build project delivery system to be used on a specific project with a minimum allowable construction cost of five million dollars (\$5,000,000). This change in the threshold from \$10,000,000 to \$5,000,000 will increase the number of projects that qualify to utilize design and build project delivery systems under the procurement code.

The bill provides that a maximum of the top five firms on the short-list, in accordance with technical and qualifications-based criteria, will be paid a recompense not to exceed 1% of the total project to cover actual proposal expenses for a proposal in excess of \$400,000 and is for those proposals not limited to either site improvements or adaptation for a pre-engineered building or system. Payment shall not entitle an agency to ownership of the documents or ideas represented in the documents.

The minimum construction cost requirement to a design and build project delivery system does not apply to a project of the maximum allowable construction cost of \$400,000 or less or those

proposals not limited to either site improvements or adaptation for a pre-engineered building or system.

FISCAL IMPLICATIONS

For projects using a design/build project delivery system, funding would have to be increased by 5 percent to pay up to 5 vendors for proposal preparation costs. A \$10 million project (the current limit), would require an additional \$500,000 for these development costs. In lowering the design/build delivery threshold to \$5 million, additional costs would apply using design-build. However, this additional expense may prove cost effective for large projects.

The PED indicates that there will be an increase in the costs associated with the designing and engineering portions of school district projects due to the paid recompense not to exceed 1% for the actual proposed expenses incurred by unsuccessful firms. Furthermore, PED believes that the amount paid to the unsuccessful firms will discourage agencies in using the design/build process.

PED additionally points out that design build project delivery systems have several advantages to the owner. These types of projects do not allow the designer and contractor to sue each other for design errors or omissions and provide the owner with a higher level of service to ensure that construction meets the project plans and specifications. The design/build team assumes all of the risk for project completion and creates a single point of contact and responsibility for the entire project. However, the owner no longer has the architect overseeing the contractor's work and a lower quality product and higher long-term maintenance cost may result due to the cost given for the design/build team to work within.

SIGNIFICANT ISSUES

Under current law payment of a stipend to finalist firms is optional. SB 725 would require payment of actual costs up to 1% of the total project cost. GSD indicates that this allowance while encouraging competition might result in competing firms expanding their proposal and presentation beyond what is required because they could be reimbursed. GSD state that in order to protect against using project money to pay for show rather than substance, rule development should limit that to the extent possible, including defining reasonable proposal expenses.

PED indicates that currently there is no requirement to pay a stipend not to exceed 1% for the actual proposed expenses incurred by unsuccessful firms. It is PED's opinion that when a design/build project delivery system is used, a two-phased procedure for awarding design and build contracts must be adopted and should include the minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, the composition of the selection committee and a description of the phase-two requirements and subsequent management needed to bring the project to completion.

Through the new standards-based process, the Public School Capital Outlay Council (PSCOC) is currently trying to fund whole projects in lieu of phasing projects. It is PED's opinion that by funding whole projects and lowering the threshold more school construction projects may qualify to be eligible to utilize a design and build system.

The Public School Facilities Authority (PSFA) notes that some advantages to the owner include a single point of contact and responsibility for the entire project and the design/build team

assumes all risk for project completion, which significantly reduces the role of the owner in this process. Another advantage for the owner is that the designer and contractor cannot sue each other for design errors and omissions.

PSFA also notes that a disadvantage to the owner is that the architect cannot oversee the contractor's work because the architect is not the owner's agent. The design/build team will most likely meet cost goals because it translates to profit for the team; however, the overall quality of the project may be lower due to this reason.

TECHNICAL ISSUES

Recompensing firms on the short list who submit a response to a design build project delivery system but prohibiting the agency from ownership of the documents submitted may conflict with the Anti-Donation Clause of the Constitution.

In the case of the firm awarded the contract, the proposal documents and ideas in the documents do become property of the state. It is not clear whether the selected firm would receive compensation for proposal preparation or if only the unsuccessful firms would be paid. (See amendments.)

OTHER SUBSTANTIVE ISSUES

Currently, the number of responses to requests for proposals for state public works projects conducted by the Property Control Division (PCD) of the General Services Department (GSD) varies from one up to ten, but averages between three and five firms submitting proposals.

AMENDMENTS

GSD suggest the following amendments:

- On page 4, line 3, after "actual", insert "reasonable". This proposed amendment would add ambiguity to the statute unless this term is further defined.
- On page 4, line 3, after "expenses", insert "as defined by rule".
- On page 4, line 4, after "Payment", insert "to firms not selected".

GM/nt